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HM INSPECTORATE OF CONSTABULARY IN SCOTLAND

**Strategic review – an independent  
assessment of Police Scotland’s response to  
a breach of Home Detention Curfew (HDC)  
– Terms of Reference**

June 2018

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# HM Inspectorate of Constabulary in Scotland

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HM Inspectorate for Constabulary in Scotland (HMICS) is established under the Police and Fire Reform (Scotland) Act 2012 and has wide ranging powers to look into the 'state, effectiveness and efficiency' of both the Police Service of Scotland (Police Scotland) and the Scottish Police Authority (SPA).<sup>1</sup>

We have a statutory duty to inquire into the arrangements made by the Chief Constable and the SPA to meet their obligations in terms of best value and continuous improvement. If necessary, we can be directed by Scottish Ministers to look into anything relating to the SPA or Police Scotland as they consider appropriate. We also have an established role in providing professional advice and guidance on policing in Scotland.

- Our powers allow us to do anything we consider necessary or expedient for the purposes of, or in connection with, the carrying out of our functions.
- The SPA and the Chief Constable must provide us with such assistance and co-operation as we may require to enable us to carry out our functions.
- When we publish a report, the SPA and the Chief Constable must also consider what we have found and take such measures, if any, as they think fit.
- Where our report identifies that the SPA or Police Scotland is not efficient or effective (or best value not secured), or will, unless remedial measures are taken, cease to be efficient or effective, Scottish Ministers may direct the SPA to take such measures as may be required. The SPA must comply with any direction given.
- Where we make recommendations, we will follow them up and report publicly on progress.
- We will identify good practice that can be applied across Scotland.
- We work with other inspectorates and agencies across the public sector and co-ordinate our activities to reduce the burden of inspection and avoid unnecessary duplication.
- We aim to add value and strengthen public confidence in Scottish policing and will do this through independent scrutiny and objective, evidence-led reporting about what we find.

Our approach is to support Police Scotland and the SPA to deliver services that are high quality, continually improving, effective and responsive to local needs.<sup>2</sup>

**This strategic review will be undertaken by HMICS in terms of section 74(1) of the Police and Fire Reform (Scotland) Act 2012 and will be provided to Scottish Ministers and published in terms of sections 78 (1) and (2) of the Act.**

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<sup>1</sup> Chapter 11, Police and Fire Reform (Scotland) Act 2012.

<sup>2</sup> HMICS, [Corporate Strategy 2017-20](#) (2017).

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## Introduction

1. This strategic review of the Police Scotland response to apprehending individuals following revocation of their Home Detention Curfew licence has been directed by the Cabinet Secretary for Justice and will be undertaken by HMICS in terms of section 74(1) of the Police and Fire Reform (Scotland) Act 2012. Our report will be provided to Scottish Ministers and published in terms of sections 78 (1) and (2) of the Act.

## Aim

2. Following the sentencing of James Wright for murder,<sup>3</sup> an offence committed while 'unlawfully at large' having breached his Home Detention Curfew in February 2017, the Cabinet Secretary for Justice wrote to HMICS on 7 June 2018 and set out the following expectations of the strategic review:
  - *to provide an independent assessment of the operation, procedures and safeguards in place by Police Scotland in relation to apprehending individuals who have breached their Home Detention Curfew with the objective of providing assurance to Scottish Ministers, the Scottish Parliament and the public. Where relevant, this should include recommendations to address any gaps in the current operation, processes, safeguards and available police powers<sup>4</sup> or where opportunities to drive improvement are identified.*

## Scope of our review

3. In terms of section 7(2)(d) of the Prisons (Scotland) Act 1989, the Cabinet Secretary wrote in similar terms to HM Inspector of Prisons for Scotland (HMIPS) to provide an independent assessment of the processes that the Scottish Prison Service (SPS) operate when considering applications for Home Detention Curfew. HMICS worked collaboratively with HMIPS to produce respective<sup>5</sup> terms of reference and will continue to work together throughout the dual review process.
4. HMICS will consider any strategic issues or themes arising from the reported breach of the Home Detention Curfew by James Wright in 2017 and may use them to inform our review. The statutory powers of HMICS do not extend to an investigation of individual cases or complaints made against police officers or police staff. Should anyone approach HMICS during our review with such a complaint, we will offer advice on where the complaint should be directed.
5. This strategic review of Police Scotland's response to a breach of Home Detention Curfew does not extend to the wider use of electronic monitoring which forms part of a number of different community disposals.<sup>6</sup>

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<sup>3</sup> James Wright conviction for murder.

<sup>4</sup> On the 27 June 2018, Mr Yousaf, the Cabinet Secretary for Justice refined the Terms of Reference to include a review of powers available to Police Scotland whilst an individual remains 'unlawfully at large'.

<sup>5</sup> HMIPS, <https://www.prisonssinspectoratescotland.gov.uk/>

<sup>6</sup> Out of scope. Electronic monitoring as part of a Restriction of Liberty Order (RLO); as a licence condition imposed or recommended by the Parole Board for Scotland following early release from prison; as part of a Restricted Movement Requirement (RMR) imposed for breach of a Community Payback Order (CPO); as a condition of a Drug Treatment and Testing Order (DTTO); and as a Movement Restriction Condition (MRC) for young people imposed by a Children's Hearing.

## Background

6. Home Detention Curfew (HDC)<sup>7</sup> is an established process to ease reintegration of prisoners back into the community whilst they are electronically tagged and is a system that is operated across the United Kingdom. The statutory framework for HDC is provided through the [Management of Offenders etc. \(Scotland\) Act 2005](#)<sup>8</sup> and came into use in Scotland in 2006. HDC allows prisoners to serve up to a quarter of their sentence (for a maximum of six months and a minimum of two weeks) on licence in the community, while wearing an electronic tag. The licence includes a range of standard conditions including curfew restrictions that require a prisoner to remain at a particular place for a set period each day. Other non-standard conditions can also be included in the licence on a case by case basis. Prisoners who fail to comply with the standard and non-standard HDC licence conditions can be recalled to custody.
7. The SPS is responsible for identifying prisoners who are eligible for HDC and for carrying out the required risk assessments. The SPS will request community assessments from local authority criminal justice social work where individuals have been deemed suitable for HDC. The SPS will then decide whether or not to release the prisoner on HDC. The SPS is also responsible for decisions on breaches and recalls. When considering the release on HDC consideration must be given to the protection of the public, preventing re-offending by the offender and securing the successful re-integration of the offender into the community.
8. A notice of intended release of a prisoner on HDC will be submitted at least seven days prior to release by the SPS to Police Scotland. Remote electronic monitoring through the issue of a personal identity device (known as 'tagging') is used to monitor compliance with curfew conditions by G4S the tagging contractor. There is no police involvement in the HDC release process or monitoring of the curfew conditions. The main role of police is in relation to the recall notice issued by the SPS when a prisoner has breached their HDC licence conditions.
9. On average there are about 300 prisoners on HDC across Scotland. SPS statistics report that about 80% of individuals successfully complete their HDC with 20% being recalled to custody due to a breach of conditions.<sup>9</sup> There are a range of reasons as to why an offender may breach the HDC and be recalled to custody. They include, tampering with or intentionally damaging the electronic monitoring devices, returning late outwith the curfew hours, being present at a restricted location or withdrawal of consent by the householder for the prisoner to remain residing at the curfew address. Where the SPS decide to revoke an HDC licence and recall an individual to prison custody, they will issue an HDC recall notice to Police Scotland.
10. A recalled prisoner is treated as 'unlawfully at large' from the date the recall notice is signed. An HDC recall is not a formal warrant, however Police Scotland must ensure that it has processes and procedures in place to risk assess each HDC recall based on the criminal history of the offender and to undertake appropriate enquiry. There are three priority categories used by Police Scotland:<sup>10</sup>
  - A. Priority 14-day enquiry period set
  - B. Medium 21-day enquiry period set
  - C. Routine 28-day enquiry period set.

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<sup>7</sup> Scottish Prison Service, [Home Detention Curfew](#).

<sup>8</sup> Section 15 *Management of Offenders etc. (Scotland) Act 2005*. <http://www.legislation.gov.uk/asp/2005/14/contents>.

<sup>9</sup> SPS statistics. Figures have been rounded up for the Terms of Reference.

<sup>10</sup> Police Scotland Standard Operating Procedure (2018).



11. Our report will provide assurance on whether the police response to the revocation of HDC is proportionate and operating effectively and efficiently within Police Scotland, as well as assessing the capacity for continuous improvement. This will be the first time that HMICS has scrutinised this specific aspect of policing in Scotland.

## Methodology

12. In conducting this review we will use our HMICS Inspection Framework.<sup>11</sup> This provides a structure that is risk-based, proportionate and focused on improving policing in Scotland. Our findings and any recommendations for improvement will be founded on evidence and organised around key themes (see appendix 1):

- Outcomes
- Leadership and governance
- Planning and process
- People and resources
- Partnerships

13. We will deliver our review over four stages with distinct themes, some of which will be undertaken concurrently.

### Stage One - Initial scoping, design and planning (*estimated June – July 2018*)

14. This stage involves the development of our inspection framework and the design of review tools and scrutiny processes for the collection and assessment of evidence. Police Scotland will be asked to provide a single point of contact for the strategic review to support the process and to facilitate appropriate access to people and information.
15. To ensure that our approach is risk based, proportionate and to minimise the overall burden of the scrutiny activity this initial stage will include desktop research, relevant academic research, document review and an analysis of relevant strategies, policies, plans, operating procedures, guidance and performance management information that relate to the management and operational delivery of warrants and HDC recall notices. This approach will refine the scope of our review, identify key lines of enquiry including areas of potential good practice, risk and concern.

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<sup>11</sup> HMICS, [Inspection Framework 2018](#).

## Stage Two - Fieldwork *(estimated July – August 2018)*

16. This stage will incorporate the fieldwork element of our review and will focus on testing the operational response to a reported breach of HDC and the procedures and safeguards in place to apprehend and return to custody an individual whose HDC has been revoked. Specific topics and questions for interviews and focus groups will be structured around our Inspection Framework.
17. This stage will involve the following activities:
  - review the leadership, governance, supervision, management and oversight arrangements including risk management, welfare and performance reporting.
  - review and assess the end-to-end policing operation, procedures, processes and safeguards including tasking and development meetings.
  - review available powers to Police Scotland whilst an individual remains 'unlawfully at large'.
  - engagement with partners and stakeholders to establish the effectiveness of collaborative and co-ordinated working and in particular information exchange.
  - we will also undertake a quantitative and qualitative audit of the number of individuals who have been released under HDC during 2017 - 2018 and are subsequently categorised as 'unlawfully at large' having breached their HDC terms. This is necessary to make an informed assessment as to the demand profile, the processes and oversight arrangements in place to manage those individuals and impact on police and communities across Scotland.
  - we shall conduct interviews and focus groups with a range of police officers and police staff concerned with the management of warrants and HDC recall notices. In accordance with our duty of user focus, we will actively engage with a range of stakeholders and gather their views throughout the review process. Key stakeholders include:
    - Police Scotland
    - Scottish Police Authority
    - Scottish Government
    - Scottish Prison Service
    - Staff Associations and unions
    - Crown Office and Procurator Fiscal Service (COPFS)
    - Police Investigations and Review Commissioner (PIRC)
    - G4S
    - Other criminal justice partners.<sup>12</sup>
18. Should HMICS identify any areas for immediate improvement during our review, these will be communicated directly to Police Scotland for consideration. The details of any immediate improvement requests will be included in our final report.

## Stage Three - Review and analysis of evidence *(estimated August 2018)*

19. During this stage, HMICS will review and assess the information and evidence collected during our fieldwork stage. Where appropriate, we will identify areas for further examination and analysis, which may require additional fieldwork activity and a change to our planned reporting timescales.

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<sup>12</sup> Local Authority Criminal Justice Social Work.



## **Stage Four - Reporting, quality assurance and publication** *(estimated September 2018)*

20. Following conclusion of our fieldwork and analysis, we will prepare a report in line with HMICS reporting guidelines. The report will outline our methodology and approach, our findings and any recommendations for improvement. Where we identify good practice, this will also be highlighted in our report. Quality assurance will be provided through internal review and factual accuracy checking by relevant stakeholders who have contributed to the evidence base of our report.
21. Our report will first be submitted to Scottish Ministers who will lay it before the Scottish Parliament and publish it in terms of sections 78(1) and (2) of the Police and Fire Reform (Scotland) Act 2012. Copies of the report will also be provided to the Scottish Police Authority and the Chief Constable. Our report will also be made publicly available on the HMICS website.
22. For further information about this strategic review, please contact Stephen Whitelock, Lead Inspector, HMICS ([stephen.whitelock@gov.scot](mailto:stephen.whitelock@gov.scot)).

### **Gill Imery QPM**

HM Chief Inspector of Constabulary in Scotland



## Appendix 1 - HMICS Framework - An independent assessment of Police Scotland's response to a breach of Home Detention Curfew (HDC)

Outcomes	Leadership and governance	Planning and process	People and resources	Partnerships
1.1 Adherence to and compliance with statutory functions, standard operating procedures and guidance. <sup>13</sup>	2.1 Leadership, governance and direction.	3.1 Planning for and managing risk.	4.1 Management of resources including prioritised, auditable and defensible resourcing decisions.	5.1 Partnerships and effective multi-agency working
1.2 Performance management and quality assurance.	2.2 Scrutiny and oversight.	3.2 Subject profiles used to support an ongoing operation against an individual.	4.2 Staff, motivation, wellbeing, satisfaction and contribution.	5.2 Information exchange.
1.3 Organisational learning and development.	2.3 Operational planning arrangements.	3.3 Operational tasking and development arrangements.	4.3 Staff deployment and team work.	
1.4 Impact on communities.			4.4 Effective communication with officers and staff through briefing and debriefing arrangements.	
1.5 Impact on staff.			4.5 Information systems and data management.	

<sup>13</sup> Management of Offenders etc. (Scotland) Act 2005, Police Scotland Standard Operating Procedures, Scottish Prison Service and Scottish Government guidance.



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### **About Her Majesty's Inspectorate of Constabulary in Scotland**

HMICS operates independently of Police Scotland, the Scottish Police Authority and the Scottish Government. Under the Police and Fire Reform (Scotland) Act 2012, our role is to review the state, effectiveness and efficiency of Police Scotland and the Scottish Police Authority. We support improvement in policing by carrying out inspections, making recommendations and highlighting effective practice.

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